



April 16, 2001

Ms. Jan Clark
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-1497

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146016.

The City of Houston (the "city") received a request for all records maintained by the Office of the Inspector General relating to a specified individual. You state that you are releasing the documents that you do not believe are confidential. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted information is from a completed investigation. However, you have asserted section 552.101 in conjunction *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), which is other law that makes information confidential. Accordingly, we will address your arguments.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* The court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment in *Ellen*. 840 S.W.2d at 519. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Id.* at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In conclusion, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Based on *Ellen*, a governmental body must withhold the identities of alleged victims and witnesses to alleged sexual harassment as well as any information which would tend to identify a witness or victim.

However, in this instance, the requestor is the attorney of the alleged victim of sexual harassment. Under section 552.023, a person's authorized representative has a special right of access to information that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy. Therefore, the requestor has a special right of access to the submitted information.¹ However, the submitted information also contains the identities of witnesses and their statements as well as the identity of another victim of alleged sexual harassment. In order to protect the privacy of the witnesses and the other victim, you must withhold the identities of the witnesses and the other victim as well as their statements. We have marked the information that you must withhold under common law privacy. Because *Ellen* provides that the accused's statement must be released, you must release his statement. Further, you must release the remaining submitted information to this requestor.

We also note that the information that you must release contains information that might be excepted from disclosure under section 552.117(1) of the Government Code. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, social security number, and family member information of a current or former government employee, if the employee elected to withhold this information under section 552.024. Please note that whether a particular piece of

¹We also acknowledge that you state that you have released the victim's written and tape recorded statements to the requestor pursuant to section 552.023 of the Government Code.

information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a proper election must be made *prior* to the request for information. If the employee elected prior to the request to keep this information confidential under section 552.024, you must withhold the marked information under section 552.117(1) of the Government Code.² If no timely election has been made, then you may not withhold the marked information.

In conclusion, you must withhold the information we have marked under section 552.101 in conjunction with common law privacy. Further, you must also withhold any information that is excepted under section 552.117(1) of the Government Code. You must release the remaining information to this requestor.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

²We note that the requestor has a special right of access to section 552.117(1) information of the alleged victim pursuant to section 552.023.

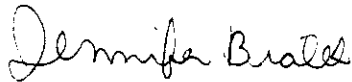
³If the city receives a subsequent request for this information from someone other than the requestor or the requestor's authorized representative, the city should submit another request for a decision to this office.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/rr

Ref: ID# 146016

Encl: Submitted documents

cc: Mr. Keith Lovelace
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(w/o enclosures)